United States Court of Appeals

for the Second Circuit

APPENDIX

76-7288

A P P E N D I X

IN THE

SECOND CIRCUIT COURT OF APPEALS OF THE UNITED STATES

NO. 76 - 7288

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P/3

DONALD SCHANBARGER,

Plaintiff - Appellant,

vs.

DISTRICT ATTORNEY OF RENSSELAER COUNTY, DIRECTOR OF DEPARTMENT OF MENTAL HEALTH OF RENSSELAER COUNTY, SUPERINTENDENT OF THE NEW YORK STATE POLICE, EDWARD A. VIELKIND and CHARLES P. WASKINS,

Defendants - Appellees.

APPEALED ORDER OF JUDGMENT OF DISMISSAL OF COMPLAINT

BY THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF NEW YORK

NOTICE OF APPEAL filed June 14, 1976

PAGINATION AS IN ORIGINAL COPY

APPENDIX I N D E X

Plaintiff complaining of the defendants alleges:

FOR A FIRST CAUSE OF ACTION AGAINST THE DISTRICT ATTORNEY OF RENSSELAER COUNTY and DIRECTOR OF DEPARTMENT OF MENTAL HEALTH OF RENSSELAER COUNTY

1. Asserted jurisdiction is Title 42 U.S.C. Section 1983, Title 28 Section 1343 subd. 3. and 4., and the United States Constitution's Article 3. Section 2., personal rights clause of the 10th Amendment and the equal protection, prohibited state conduct and due process clauses of the 14th Amendment, and plaintiff raises the question of

> Whether a federal court failing to take judicial notice of the United States Constitution without request, violates the personal rights claues of the 8th, 9th, & 10th Amendments and equal protection, prohibited state conduct and due process clauses of the 5th and 14th Amendments of the federal Constitution, when every member of the United States judiciary have agreed to support it as a condition of their office as such member?

2. On information and belief this cause of action requires a 3 judge District Court for full appeals. e.g. Title 28 USC 2281

3. In 1968 the plaintiff was arrested by New York State troopers, searched and charged with loitering, which was prosecuted by the office of the office of the Rensselaer County District Attorney, all of which were without probable cause of plaintiff doing an illegal act as he failed to supply identification and information as to where he came from and was going as he walked alone a road.

4. The plaintiff was ordered by the magistrate to have a psychiatric examination at the Rensselaer Department of Mental Health (Pawling Center) as a preliminary step before trial, on motion of

the Rensselaer County District Attorney's office, with such motions seldom if ever refused, over the objection of the plaintiff.

5. Plaintiif was subjected to a psythiatric examination under the implied threat of a stay at a mental hospital, by the Rensselaer County Mental Center (Pawling Center) as on information and belief are around 25% of criminal defendants of the said County with a very small % confined by outcome, for the purpose to get a dossier which always or usually had and did have results of questions about the criminal charge.

6. Plaintiff was convicted of loitering which on appeal was reversed by the New York State of Appeals in 1969.

7. Plaintiff brought civil suit against two State troopers with one suffering a $5,000 judgment for illegal arrest, assistant district attorney and mental health agent both given quasi-judicial immunity, without judgment for damages of malicious prosecution, all of which plaintiff appealed thru the New York State judiciary with last Certiorari refused by the U.S. Supreme Court Nov. 1975.

8. The Rensselaer grand jury refused to charge a State Trooper or anyone associated with the aforesaid arrest of plaintiff and /or assoiated events that caused him to expend resources as well as to put him in a false light, or on information and belief did anyone suffer a criminal prosection, than the plaintiff herein.

9. The aforesaid suit of par. #7 also had a separate cause for the invasion of privacy thru abuse of process with the aforsaid psychiatric examination of par. #5 of plaintiff for which he failed to be awarded damages.

10. The State of New York essentialy fails to exercise "Police

Power" against its agents even if there is a victim to their illegal acts, but such power is exercised over non-State agents even if there is no victim, and the State defends and pay civil damages against its agents.

11. On information and belief the DIRTSICT ATTORNEY OF RENSSELAER COUNTY, DIRECTOR OF DEPARTMENT OF MENTAL HEALTH OF RENSSELAER COUNTY and SUPERINTENDENT OF THE NEW YORK STATE POLICE thru the actors herein, by omission or commission entered into a concerted scheme and conspired together under the common law of principle in the first degree (PRINCIRLE), second degree (PRESENT) and a common law accessory before the fact (NOT PRESENT BUT COUNSELS OR AIDS BY PRIO CONDUCT), as illustrated in this cause of action. The said situtation of consiracy of more or less of traditional principles of agency, partnership, joint venture and the like for the purpose of depriving Donald Schanbarger under color of law of the right to be left alone, in violation of their oath of office, part of which being the PERSONAL RIGHTS clause of the 10th AMENDMENT and the EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCESS clauses of the 14th AMENDMENT of the FEDERAL CONSTITUTION and N.Y.S. Civil Rights Law Sec. 2., 8., 10., and 12., for plaintiff's failure to waive his FEDERAL CONSTITUTIONAL right, power, privilege or immunity, his protective conduct, and submit to demand or demands without authority of law thru prohibited conduct. The general mechanics of said conspiracy is a victum is to suffer illegal demand, arrest, search and prosecution that resuls in conviction which is calculated to exhaust all the victims resources thru assorted ploys to the end that everyone should find it to

their financial advantage to waive each and every CONSTITUTIONAL right, than to assurt them thru the DOCTRINE OF WASTE thru habit of the actors herein to engage in conduct of conformity of habit or routine practice to accomplish such results.

12. On information and belief the acts of the said actors were all willful and concerted, and malicious and knowing in furtherance of some purpose, personal to one or more of the actors herein.

13. On information and belief there is a long standing practice of the Rensselaer District Attorney to prosecute people in the interest of police, but not to prosecute police or their supporters in the interest of non-police.

14. Plaintiff was again arrested by N.Y.S. Police in May, 1974 which conviction was reversed thru appeal, with the same thrust of the aforesaid arrest of Apr. 1968 that he failed to prove his guiltless of a illegal act.

15. By reason of the aforesaid conspiracy the defendants herein have assembled things about plaintiff and/or distributed information about him, all against his wish, because of acts of government agents without authority of law, which plaintiff requires as personal to him, and for such future collection of things about plaintiff, he requires the same to be put in his possession promptly after any such criminal charge fails, without request, litigation or identification.

16. For this cause of action the question is raised

WHETHER THE GATHERING, RETENTION AND DISTRIBUTION OF INFORMATION ABOUT A PERSON BY A GOVERNMENT AGENCY THRU THE ACTION WITHOUT AUTHORITY OF LAW OF GOVERNMENT AGENTS OF THE STATE VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED

STATE CONDUCT, DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTUTITION, WHEN NO CRIMINAL CHARGE PREVAILES?

WHEREFORE plaintiff demands judgment against said defendants

1. For a permenent injunction against collecting any information about anyone when information collection and/or distrubited about a person against which a criminal conviction falls to prevail, has not been put in such persons possession;

2. For cost of suit; and

3. For other and further relief as to the court may seem just and proper in the premises.

FOR A SECOND CAUSE OF ACTION AGAINST THE DISTRICT ATTORNEY OF RENSSELAER COUNTY

17. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 1. - 14. ((1.), (2.), (3,) (4,) (5.), (6.), (7.), (8.), (9.) (10), (11.), (12.), (13.) and (14.)) of this complaint with the same force and effect as if herein set forth anew.

18. By reason of the aforesaid conspiracy in which defendant prosecuted plaintiff without probable cause after an arrest and search without probable cause or authority of law, plaintiff requires that defendant District Attorney of Rensselaer County post a peace bond of $400,000. with each criminal defendant that his office prosecuts, that prosecution of the criminal defendant will be with adequate preparation, with fairness or candor without obstruction of justice and that there is probable cause of such prosecution and that there are no facts known by such office that government have made a search or arrest without probable cause.

19. For this cause of action the question is raised

WHETHER A DISTRICT ATTORNEY'S OFFICE IN A STATE THAT ATTEMPTS PRESENTATION OF ANY CASE WITHOUT ADEQUATE PREPARATION, OR WITH WANT OF FAIRNESS OR CANDER, OR OBSTRUCTS THE ADMINISTRATION OF JUSTICE VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTUTITION, WHEN A PROSECUTION WITHOUT PROBABLE CAUSE FOLLOWS AN ARREST AND SEARCH WITHOUT PROBABLE CAUSE?

WHEREFORE plaintiff demands judgment against said defendant

1. For a permenent injunction against any criminal prosecution without posting a peace bond of $400,000. with the defendant that any charge is with probable cause with adequate preparation, fairness or cander and no obstruction of justice with no knowledge of arrest or search without probable cause or authority of law.

2. For cost of suit; and

3. For other and further relief as to the court may seem just and proper in the premises.

FOR A THIRD CAUSE OF ACTION AGAINST THE DISTRICT ATTORNEY OF RENSSELAER COUNTY

20. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 17. of this complaint with the same force and effect as if herein set forth anew.

21. By reason of the aforesaid conspiracy in which defendant permitted plaintiff to suffer a criminal prosecution after a court ordered his psychiatric examination over his objection, when all criminal defendants are not subjected to such examination as a preliminary stept for trial, plaintiff requires that the District Attorney of Rensselaer County not be permitted to use his office to prosecute any criminal defendant regardless of identification

or lack thereof after a court has ordered psychiatric examination of such person in regard to a related criminal prosecution.

22. For this cause of action the question is raised

WHETHER A DISTRICT ATTORNEY'S OFFICE IN A STATE THAT PROSECUTES A CRIMINAL DEFENDANT UNDER A CRIMINAL CHARGE AFTER A STATE COURT ORDERS A PSYCHIATRIC EXAMINATION CONNECTED THEREOF BEFORE TRIAL OVER SUCH DEFENDANTS OBJECTION VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTUTITION, WHEN ALL CRIMINAL DEFENDANTS ARE NOT REQUIRED TO SUBMIT TO INTERROGATION BEFORE TRIAL WITH ITS RESIDUE INJURY, AND CIVIL COMMITMENT OF THE MENTALLY ILL OR DEFECTIVE IS AVAILABLE?

WHEREFORE plaintiff demands judgment against said defendant

1. For a permenent injunction against any criminal prosecution by defendant's office of any such criminal defendant regardless of identification or lack thereof, who has been ordered to have a psychiatric examination before trial;

2. For cost of suit; and

3. For other and further relief as to the court may seem just and proper in the premises.

FOR A FOURTH CAUSE OF ACTION AGAINST THE DIRECTOR OF DEPARTMENT OF MENTAL HEALTH OF RENSSELAER COUNTY

23. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 17. of this complaint with the same force and effect as if herein set forth anew.

24. By reason of the aforesaid conspiracy in which defendant permitted plaintiff to suffer a psychiatric examination while he was under criminal prosecution after a state court ordered it to obtain a dossier about him from defendant, which was issued by

the office of the Director of Department of Mental Health of Rensselaer County, plaintiff requires that the defendant not permit anyone regardless of identification or lack thereof to be subjected to psychiatric examination by court order thru or by defendant's department.

25. For this cause of action the question is raised

WHETHER A DEPARTMENT OF MENTAL HEALTH IN A STATE THAT CONDUCTS A STATE COURT ORDERED PSYCHIATRIC EXAMINATION OF A CRIMINAL DEFENDANT UNDER A CRIMINAL PROSECUTION AND SUPPLIES SUCH COURT WITH A DOSSIER ABOUT SUCH DEFENDANT, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTUTITION, WHEN ALL CRIMINAL DEFENDANTS ARE NOT REQUIRED TO SUBMIT TO INTERROGATION BEFORE TRIAL WITH ITS RESIDUE INJURY, AND CIVIL COMMITMENT OF THE MENTALLY ILL OR DEFECTIVE IS AVAILABLE?

WHEREFORE plaintiff demands judgment against said defendant

1. For a permenent injunction against any use of defendant's department by the New York State judiciary to subject a criminal defendant regardless of identification or lack thereof, under a criminal charge, to a psychiatric examination before trial to generate a dossier about a criminal defendant, for use of a state court;

2. For cost of suit; and

3. For other and further relief as to the court may seem just and proper in the premises.

FOR A FIFTH CAUSE OF ACTION AGAINST THE SUPERINTENDENT OF THE NEW YORK STATE POLICE

26. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 17. of this complaint with the

same force and effect as if herein set forth anew.

27. On information and belief the New York State judiciary does not have a demonstratable procedure for a person to recover damages of a criminal prosecution that results or follows an arrest or search by government agents without probable cause fails to results in a criminal conviction, if it is not alleged and proved the criminal charge was without probable cause notwithstanding the fact of an arrest or search without probable cause.

28. By reason of the aforesaid conspiracy in which defendant failed to prevent the prosecution of the plaintiff after his arrest and search without probable cause by one under the defendant's supervision, plaintiff requires that the superintendant of the New York State Police not permit anyone under defendant's control or supervision to make out a complaint or information about a person without first giving such person with or without name, a bond of $400,000. that prio to charge there was no arrest or search without probable cause by a government employee connected or related to such charge.

29. For this cause of action the question is raised

WHETHER THE PREPARATION OF A CRIMINAL COMPLAINT OR INFORMATION ABOUT A PERSON BY A STATE AGENT WHO DOES NOT GIVE TO SUCH PERSON WHO COULD BE EXPECTED TO SUFFER THE INTRINSIC DAMAGES OF SUCH PROSECUTION, A BOND THAT SUCH CHARGE IS NOT THE OUTGROWTH OR CONNECTED OR RESULTS OF AN ARREST OR SEARCH WITHONT PROBABLE CAUSE AND AUTHORITY OF LAW OF A STATE AGENT VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTUTITION, WHEN THE STATE HAS NO DEMONSTRATABLE WAY FOR A PERSON TO COLLECT FULL DAMAGES OF A CRIMINAL PROSECUTION THAT IS THE RESULTS OR FOLLOW ARREST AND/OR SEARCH WITHOUT PROBABLE CAUSE OR AUTHORITY OF LAW ON THE PART OF STATE AGENTS?

WHEREFORE plaintiff demands judgment against said defendant

1. For a permanent injunction against the Superintendant of the New York State Police to not permit anyone under defendant's control or supervision to make out a complaint or information about a person without first giving such person with or without name, a bond of $400,000. indexed at March 1, 1976 each year, that prio to charge there was no arrest or search without probable cause by a Agent State in anyway connected or related to such charge;

2. For cost of suit; and

3. For other and further relief as to the court may seem just and proper in the premises.

FOR A SIXTH CAUSE OF ACTION AGAINST THE SUPERINTENDENT OF THE NEW YORK STATE POLICE

30. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 17. of this complaint with the same force and effect as if herein set forth anew.

31. The plaintiff financed the damages of the aforesaid arrest made upon him and cost of aforesaid civil prosecution to obtain payment for the damages suffered which resulted in the aforesaid judgment that falls under the Doctrine of Waste that requires proceedings for enforcement of money judgment against a State Trooper.

32. By reason of the aforesaid conspiracy in which defendant permitted the aforesaid arrest of plaintiff for which he received the aforesaid $5,000. judgment thru the Doctrine of Waste, plaintiff requires that the Superintendant of the New York State Police not permit anyone under his direction or control to arrest

anyone without giving such arrestee a bond of $400,000. that the arrest is/or was with probable cause and authority of law.

33. For this cause of action the question is raised

WHETHER THE ARREST OF A PERSON BY A STATE AGENT WHO DOES NOT GIVE TO SUCH PERSON WHO WILL SUFFER THE INTRINSIC DAMAGES OF SUCH ARREST, A BOND THAT SUCH ARREST IS/ OR WAS NOT WITHOUT PROBABLE CAUSE AND/OR THE OUTGROWTH OR CONNECTED OR RESULT OF ACTION OF ANY STATE AGENT WITHOUT AUTHORITY OF LAW, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTUTITION, WHEN THE STATE HAS NO DEMONSTRATABLE WAY FOR A PERSON TO COLLECT FULL DAMAGES OF A ARREST BY A STATE AGENT THAT IS THE RESULTS OR FOLLOWS ACTION OF A STATE AGENT THAT IS WITHOUT PROBABLE CAUSE AND AUTHORITY OF LAW?

WHEREFORE plaintiff demands judgment against said defendant

1. For a permanent injunction against the Superintendant of the New York State Police to not permit anyone under defendant's control or supervision to make arrest of a person without first giving such person with or without name, a bond of $400,000. indexed at March 1, 1976 each year, that prio to such arrest there was no action without probable cause and authority of law by a Agent State in anyway connected or related to such arrest;

2. For cost of suit; and

3. For other and further relief as to the court may seem just and proper in the premises.

FOR A SEVENTH CAUSE OF ACTION AGAINST EDWARD A. VIELKIND AND CHARLES P. HASKINS

34. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 17. , 27., and 31. of this complaint with the same force and effect as if herein set forth anew.

35. Upon information and belief EDWARD VIELKIND and CHARLES HASKINS are both clerks of the N.Y.S. Supreme Court for Rensselaer County.

36. The plaintiff asked EDWARD VIELKIND and CHARLES HASKINS, both two times by mail in December, 1975 to sign an INFORMATION SUBPOENA and RESTNAINING NOTICE for the aforesaid arrest judgment against N.Y.S. Trooper Robert Kellogg, which both refused both or failed to do, who on information and belief are the only ones authorized to sign them for first service, and that their refusal to sign them was in furtherance of a conspiracy to obstruct, delay, increase cost of collection of the aforesaid judgment beyond that required of other judgment creditors, and protect Robert Kellogg the judgment debtor from the indignities of judgment, by failure to preform their duties under N.Y.S. CPLR Sec. 2302(a) to issued subpoena and Sec. 5222(a) to issue Restraining Notice, and thereby deprive the plaintiff a judgment creditor of N.Y.S. CPLR Sec. 5222 Restraining Notice to conserve assets and Sec. 5223 (5224(3)) Disclosure of assets of the aforesaid judgment debtor.

37. No INFORMATION SUBPOENA or RESTRAINING NOTICE have been served upon the aforesaid judgment debtor by the plaintiff.

38. Upon information and belief EDWARD VIELKIND and CHARLES HASKINS failed or refused to sign the aforesaid of paragraph #36 papers in furtherance of a conspiracy of more or less traditional principles of agency, partnership, joint venture and the like for the purpose of malicious, willful and knowingly depriving Donald Schanbarger of rights of the equal protection, prohibited state conduct and due process claues of the 14th Amendment of the fed-

eral Constitution.

39. Plaintiff estimate the aforesaid paragraph #36 failure of Edward VIELKIND and Charles Haskins to sign the said papers has or will result in the damage to the plaintiff of the sum of $6,000.

40. For this cause of action the question is raised

WHETHER THE FAILURE OF CLERKS OF A STATE JUDICIARY TO SIGN PAPERS THAT THEY ARE AUTHORIZED BY STATE LAW TO SIGN WHICH IN EFFECT CONVEY A RIGHT THAT OTHERS ENJOY AS A RIGHT WITH OUT ANY LEGAL HOCUS POCUS, VIOLATES THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, AND DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN A STATE JUDICIARY CLERKS FAIL TO SIGN PARERS AS A FUNCTION AND DUTY OF THEIR OFFICE WHEN A PERSON HAS A RIGHT UNDER STATE LAW FOR JUDICIAL PAPERS THAT OTHER PEOPLE OBTAIN LIKE STATE JUDICIAL PROCESS WITHOUT QUESTION SUBJECT TO QUESTION ONLY AFTER ISSUE AND SERVICE?

41. By reason of the joint and several acts of the defendants in their willful and malicious failure to sign the INFORMATION SUBPOENA and RESTRAINING NOTICE state judicial processes as a function and duty of their office which has caused delay and cost of the aforesaid judgement collection plaintiff demands $6,000.

42. By the reason the joint and several willful and malicious failure of the defendants herein to sign or issue the aforesaid processes in wanton disregard of the rights and feelings of the plaintiff he demands exemplary and puntive damages of $40,000.

WHEREFORE plaintiff demands judgment against said defendants for the sum of $6,000 as compensatory damages, $40,000 exemplary and puntive damages, cost of suit, and for other and further relief as to the court may seem just proper in the premises.

FOR A EIGHTH CAUSE OF ACTION AGAINST EDWARD A. VIELKIND AND CHARLES P. HASKINS

43. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 34., 35., 36., 37., 38. and 39. of this complaint with the same force and effect as if set forth anew.

44. Upon information and belief EDWARD VIELKIND and CHARLES HASKINS have continued in their aforesaid office after their failure to sign the aforesaid processes.

45. For this cause of action the question is raised

WHETHER THE FAILURE OF CLERKS OF A STATE JUDICIARY TO POST A PERFORMANCE BOND WITH A PERSON THEY FAIL TO ISSUE PROCESS FOR, VIOLATES THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, AND DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN STATE JUDICIARY CLERKS CONTINUE IN OFFICE AFTER FAILURE TO SIGN PROCESS AS A FUNCTION AND DUTY OF THEIR OFFICE THEY ARE AUTHORIZED BY STATE LAW TO ISSUE WHEN A PERSON HAS A RIGHT UNDER STATE LAW FOR JUDICIAL PROCESS THAT OTHER PEOPLE OBTAIN LIKE STATE JUDICIAL PROCESS WITHOUT QUESTION SUBJECT TO QUESTION ONLY AFTER ISSUE AND SERVICE?

46. By reason of the defendants failure to sign the aforesaid judicial processes plaintiff requires defendants to post $20,000 performance bond with each person they deny process to.

WHEREFORE plaintiff demands judgment against said defendants

1. For a permanent injunction against each defendant conducting their office without posting an performance bond of $20,000 with each person refused process, before any other official act.

2. For cost of suit; and

3. For other and further relief as to the court may seem just and proper in the premises.

ORDER TO SHOW CAUSE

Upon the annexed motion and affidavit of Randall J. Ezick, Esq., sworn to the 29th day of March, 1976, and the exhibits annexed thereto, it is

ORDERED that the plaintiff show cause at a motion term of this Court to be held in and for the United States District Court of the Northern District of New York at the United States Court House located in the City and County of Albany, New York on the 19th day of April, 1976 at 10:00 in the forenoon of that day or as soon thereafter as counsel can be heard why an Order should not be made herein extending the time of the defendants, District Attorney of Rensselaer County, Director of Department of Mental Health of Rensselaer, Edward A. Vielkind and Charles P. Haskins, to answer, plead or otherwise appear with respect to the summons and complaint served herein until twenty (20) days after the signing of this Order;

IT IS FURTHER ORDERED that service of a copy of this Order and the papers upon which same is granted, on the said plaintiff by mailing a copy of same to the address for the plaintiff set forth on the summons herein, Ferguson Lane, West Hebron, New York on or before the 30th day of March, 1976, shall be sufficient service of this Order; and, in the meantime and until the hearing and determination of this motion and the entry of an Order thereon, let all proceedings be stayed and the time of the above mentioned defendants to answer, plead or otherwise appear be extended as hereinbefore Ordered.

App. 16 SHOW CAUSE AFFIDAVIT

RANDALL J. BZICK, being duly sworn, deposes and says that he is an attorney and counselor at law and an associate of Carter, Conboy, Bardwell, Case, and Blackmore, Esps., attorneys for defendants District Attorney of Rensselaer County, Director of Department of Mental Health of Rensselaer County, Edward A. Vielkind and Charles P. Haskins above named, with offices located at 40 Steuben Street, Albany, New York.

That this affidavit is made in support of the within motion for an Order extending the time of the defendants, District Attorney of Rensselaer County, Director of Department of Mental Health of Rensselaer County, Edward A. Vielkind and Charles P. Haskins, to answer, plead or otherwise appear with respect to the summons and complaint served in the above entitled matter until twenty days after the signing of the within Order and staying all proceedings herein, including the time of the said defendants to answer, plead or otherwise appear, until the hearing and determination of this motion and entry of an Order thereon.

That annexed hereto and made a part hereof and incorporated herein by reference is a copy of the plaintiff's summons and complaint filed in the above entitled matter with the Clerk of the United States District Court of the Northern District of New York on February 20, 1976.

That said summons and complaint were delivered to your deponent's offices on March 19, 1976 at approximately 4:30 in the afternoon of that day.

That as the Court will note, the within complaint sets forth eight separate and distinct causes of action against the various

defendants herein, which causes of action allegedly raise numerous and substantial constitutional questions concering violation of personal rights, including violations of the 8th, 9th and 10th amendments and equal protection, prohibited state conduct and due process clauses of the 5th and 14th amendments. Additionally, said complaint requests various types of extreme injunctive relief, including the enjoining of any criminal prosecution by the District Attorney of Rensselaer County unless a $400,000 peace bond be posted, enjoining the Director of the Department of Health of Rensselaer County from subjecting criminal defendants to psychiatric examinations before trail.

That your deponent requests an extention of the time in which to answer, plead or otherwise appear not only because of the complex nature of the causes of action set forth in the complaint, but also due to the fact that there are substantial questions concerning the coverage of any applicable polices of insurance and that additional time is necessary in order to properly resolve these coverage questions and thereby determine the manner in which this action will be defended.

That your deponent's office, since the receipt of the within summons and complaint and at the present time, are endeavoring to determine the applicability of the a[illegible]referred to insurance and the coverage provided by said insurance and are endeavoring to ascertain the most expedient means of resolving the within action by answer, motion or otherwise and are attempting to prepare a proper defense to this action.

That the time within which to answer, plead or otherwise ap-

pear by the above named defendants has not yet expired.

That no application for the same or similar releif has been made to any other Court of Judge.

WHEREFORE, your deponent prays for an Order extending the time of the defendants, District Attorney of Rensselaer County, Director of Department of Mental Health of Rensselaer County, Edward A. Vielkind and Charles P. Haskins, to answer, plead or otherwise appear with respect to the summons and complaint served in the above entitled matter until twenty days after the signing of the within Order and staying all proceedings herein, including the time of the said defendants to answer, plead or otherwise appear, until the hearing and determination of this motion and entry of an Order thereon, and for such other and further relief as to this Court may seem just, proper and equitable.

(SUMMONS OMITTED FOR PRINTING)

(COMPLAINT OMITTED FOR PRINTING AS App. 1-14)

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will move this Court at the Federal Building, City and County of Albany, New York, on the 17th day of May 1976 at ten o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order pursuant to Section 12(b) of the Rules of Civil Procedure for the following relief: to dismiss the action as to the District Attorney of Rensselaer County, the Director of the Department of Mental Health of Rensselaer County, Edward A. Vielkind and Charles P. Haskins,

on the grounds that the complaint fails to state a claim against the above named defendants upon which relief can be granted and on the grounds that this court lacks jurisdiction over the subject matter of this action.

The affidavit of David R. Dudley, in support of the motion, is annexed hereto as Exhibit "1".

AFFIDAVIT

DAVID R. DUDLEY, being duly sworn, deposes and says:

1. I am an Assistant County Attorney on the staff of the Rensselaer County Attorney who is responsible for defending employees of the County when sued in their official capacity.

2. The plaintiff fails to allege any acts on the part of the defendants, District Attorney, Director of Mental Health, Edward A. Vielkind and Charles P. Haskins, which constitute a cause of action for which relief may by granted in this court.

3. The plaintiff's complaint sets forth facts dealing almost exclusively with ministerial acts of county officials.

4. That even if such acts were not done or were improperly done plaintiff's remedy.is not a legal action in federal court.

5. Plaintiff here seeks injunctive relief against county officials to prohibit the performance of acts which such officials are legally required to preform.

6. Plaintiff seeks to have imposed on the District Attorney, Director of Mental Health and the Courts unreasonable, unnecessary and improper burdens and conditions precedent to the performance

of their required duties.

7. That it is without the jurisdiction of this court to grant the relief requested, namely, injunctive relief against officials of Rensselaer County.

WHEREFORE, it is respectfully requested that the complaint be dismissed as to the District Attorney of Rensselaer County, the Director of Department of Mental Health of Rensselaer County, Edward A. Vielkind and Charles P. Haskins.

NOTICE OF MOTIONS

PLEASE TAKE NOTICE that on the papers of the case the undersigned will move this Court at the Federal Post Office-Courthouse, Albany, New York, on the 17th day May 1976 at 10 o'clock in the forenoon of that day or as soon thereafter as he may be heard that motions to dismiss the Complaint be denied on the grounds that:

1. There is no reasonable remedy or remedies available to plaintiff from N.Y.S., whos remedies he has sustantially exhausted;

2. COMITY afforded the defendants by this Court is to permit them to continue in the majesty of their position as franchised criminals as afforded them by N.Y.S.;

3. State agents can not pick and chose their function or duties required by law, but must act in turn of request or demand;

4. All laws of N.Y.S. that authorize conduct objected to in the COMPLAINT violate the 10th & 14th Amendments of the federal Constitution;

5. POLICE POWER of the State can not be exercised without pro-

visions for total recovery of damages suffered thru violations of the 10th & 14th Amendments to the federal Constitution;

6. Plaintiff assurts R.C.P Rule 17(b) and N.Y.S. CPLR 1023 & 1024 requiring this Court to add defendants names to official titles if needed, to be supplied by their atterney; and

7. Dismissal of the COMPLAINT would be oppressive and in violation of the Federal Constitution.

Any dismissal Order of the COMPLAINT contain a clause not on merits.

PLEASE TAKE FURTHER NOTICE that plaintiff demands specification as to laws claim by defendants requiring them to do acts complainte of in the COMPLAINT.

PLEASE TAKE FURTHER ADDED NOTICE that plaintiff moves that this case be heard by a three judge District Court.

PLEASE TAKE FURTHER ADDITIONAL NOTICE under RCP 55 (b2), plaintiff will demand a Default Judgment as demanded in the COMPLAINT against the SUPERINTENDENT OF THE NEW YORK STATE POLICE for failure to answer, and that the name of William Connelie the said official at the 2-27-76 time of service of the S&C and at present, be aded to the official title. e.g. under RCP 17(b) & CPLR 1023. Plaintiff objects to any late answer and that any order for late answer after default is abuse of discretion.

(APPEARANCE)

The defendant, the Superintendent of the New York State Police, hereby appears in this action by his attorney, the Honorable Louis

App. 22 (NOTICE OF MOTION) & (APPEARANCE)

J. Lefkowitz, Attorney General of the State of New York, and moves this honorable Court as follows:

1. To dismiss the action against him because this honorable Court lacks jurisdiction over the person of the defendant;

2. To dismiss the action against him because this honorable Court lacks jurisdiction over the subject matter;

3. To dismiss the action as against him for failure to state a claim upon which relief can be granted:

4. To dismiss the action against him on the grounds that there is no diversity of citizenship between the plaintiff and the defendant: and

5. To dismiss the action against him on the grounds that there are other actions pending in the United States District Court for the Northern District of New York (75-CV-336), which action was decided by the Honorable James T. Foley, D.J., in a memorandum-decision and order dated February 11, 1976, in the Court of Claims of the State of New York, in the Supreme Court of the State of New York, County of Washington, and in the Supreme Court of the State of New York, County of Albany, all arising out of the same facts as alleged in the complaint herein;

6. Or, in the alternative, for an order extending the defendant's time to answer or otherwise move with reference to the complaint herein until such time as all the aforementioned proceedings in the Second Circuit Court of Appeals and various State Courts are finally disposed of.

That attached hereto is the affidavit of Robert M. Auld, Assistant Attorney General of the State of New York, which more clearly states the reasons for the relief sought in the aforenumbered paragraphs.

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the above

motion on for hearing before this Court at the United States Court House, Albany, New York, on the 17th day of May, 1976, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

AFFIDAVIT

ROBERT M. AULD, being duly sworn, deposes and says:

I am an Assistant Attorney General of the State of New York, associated with the honorable Louis J. Lefkowitz, Attorney General of the State of New York, the attorney for the above named defendant, the Superintendent of the New York State Police, and am fully familiar with all the facts and circumstances hereinafter set forth, and am submitting this affidavit in support of the motion of the defendant aforementioned to dismiss the above entitled action on the grounds set forth in the notice of motion herein, or, in the alternative, for a stay of all further proceedings pending the final disposition of the other actions pending by the above named plaintiff based upon the same facts as are alleged in the complaint herein.

That on May 9, 1974, the plaintiff was involved in an incident involving his Volkswagen Camper which was parked, according to his allegation, in the parking lot of Alkens Men's Hairstylists adjacent to Central Avenue in the Town of Colonie, County of Albany, State of New York. That he was approached by two New York State Troopers in the late evening hours, and was asked certain questions to which he refused to make an answer and as a result of the

particular circumstances, location of the plaintiff and his Volkswagen, hour of the night, and general conditions of the scene, the State Troopers arrested the defendant in the early hours of May 10, 1974, and charged him with certain violations of the Penal Law and the Vehicle and Traffic Law of the State of New York.

That eventually after having been found guilty in the Police Court in the Town of Colonie, Judge John J. Clyne wrote a decision, wherein he dismissed the charges against the defendant in those actions, the plaintiff in this action.

That on July 15, 1974, a "Notice of Intention To File Claim" was received in the office of the Department of Law of the State of New York, alleging that the claimant (Donald Schanbarger, the plaintiff herein) was claiming against the State of New York for damages as a result of the activities of two State Troopers on May 9 and 10, 1974, at Alkens Men's Hairstylists.

That on March 5, 1975, Donald Schanbarger caused a motion for disclosure to be brought on in the Court of Claims relative to his aforementioned claim against the State of New York.

That said motion for disclosure (M-17207) came on to be heard before the Honorable Milton Alpert, Judge of the Court of Claims, on April 6, 1975, wherein Judge Alpert denied the motion for disclosure as being premature but granted Donald Schanbarger permission to renew his motion after he filed his formal notice of claim against the State of New York; Donald Schanbarger did on June 24, 1975, which has received Claim No. 59399.

That on March 6, 1975, the plaintiff herein, Donald Schanbarger, commenced an action in the Supreme Court of Albany County (Index

No. 9370-74) against Edward Dott's Garage, Inc. as the named defendant, wherein he sought replevin of his Volkswagen and certain personal property incident to the Volkswagen as well as money damages and epuitable relief that the defendant, Edward Dott's Garage, deliver all of said chattels to the plaintiff at his home in Salem, New York.

That pursuant to statutes of the State of New York, the Attorney General of the State of New York represents and has undertaken the defense of said action by Donald Schanbarger against Edward Dott's Garage, Inc., which action has passed through the initial phases of answer and discovery and has been assigned a calendar number in the Albany County Supreme Court.

That on May 6, 1974, Donald Schanbarger commenced an action in the New York State Supreme Court, Washington County, against Carl R. Baker, T. F. Hudson, R. D. Dilton, Philip B. Phelan and William E. Kirwin.

That action in the Supreme Court of Washington County against the four named individual New York State Troopers and the then Superintendent of New York State Police, William Kirwin, also alleged that the plaintiff, Donald Schanbarger, has been damaged as a result of a conspiracy by all of them as a result of certain activities which took place in the parking lot of Alkens Men's Hairstylists on the evening of May 9, 1974, and early morning of May 10, 1974.

That the aforesaid action in the Supreme Court of the State of New York, Washington County, has progressed to the point where there has been pretrial motions, and answer on behalf of the de-

fendants and probable trial in the near futher.

That on July 15, 1975, the plaintiff commenced an action in the United States District Court for the Northern District of New York (75-CV-336) as plaintiff against the Superintendent of the New York State Police as well as other defendants, wherein the plaintiff made complaint in respect to the activities which took place on the evening of May 9, 1974, and the early morning of May 10, 1974.

That on March 11, 1976, the plaintiff, Donald Schanbarger, commenced an action against seven members of the New York State Police in the Supreme Court of the State of New York, Washington County, (Index No. 7723B) and one member of the Albany County Probation Department, again complaining of the activities which took place after the arrest of the plaintiff on May 10, 1974, but before the decision of Judge John J. Clyne, wherein Judge Clyne, dismissed the original charges against the defendant of the incident of May 10, 1974.

That some time prior to your deponent becoming an Assistant Attorney General in February of 1975, the plaintiff herein brough suit in the Supreme Court of the State of New York, Rensselaer County, against one Robert Kellogg and another unnamed New York State Trooper (Index No. 99934), wherein the plaintiff was ultimately held to be successful in the Court of Appeals of the State of New York, wherein a jury verdict in the amount of $5,000.00 was upheld by the Court of Appeals.

That on or about March 1, 1976, the plaintiff herein commenced the instant action (76-CV-79) against all the defendants herein,

wherein the plaintiff complains of a multitude of wrongs.

That a reading of the complaint in the instant action indicates that the plaintiff contends that there are eight separate causes of action in his complaint.

That if your deponent reads them correctly, the only causes of action wherein the plaintiff complains of and seeks relief against the Superintendant of the New York State Police, are the causes of action which are labeled in the complaint as "FOR A FIFTH CAUSE OF ACTION AGAINST THE SUPERINTENDENT OF THE NEW YORK STATE POLICE" and "FOR A SIXTH CAUSE OF ACTION AGAINST THE SUPERINTENDENT OF THE NEW YORK STATE POLICE."

That in respect to the labeled "FIFTH CAUSE OF ACTION ..." it is the position of the defendant, the Superintendent of the New York State Police, that the allegations contained therein are in the nature of legislation, which would require action by the legislature of the State of New York rather than by a Federal Court, since the Federal Court, with all due respect, would not in your deponent's belief order that the Superintendent of the New York State Polied post a bond in the amount of $400,000.00 in the event that any New York State Trooper had reason to make an arrest as alleged by the plaintiff in paragraph "28" of the complaint herein.

The position of the defendant, the Superintendent of the New York State Police, is that a fair reading of paragraphs "26", "27", "28" and "29" does not state a cause of action for which relief may be granted in this Court. That, in fact, a fair reading of the aforementioned paragraphs would indicate to your deponent that the plaintiff rather than seeking a judicial determination,

should endeavor through either the Legislative or Executive Branch of the Government of the State of New York to have his ideas submitted to the Legislature for a possible introduction of a bill and its possible signing into law by the Governor of the State of New York.

That in respect to the alleged "SIXTH CAUSE OF ACTION ..." as enumerated by the plaintiff in paragraphs "30", "31", "32" and "30" of the complaint herein, it is the belief of your deponent that the plaintiff is complaining in said Sixth Cause of Action that he has a verdict in the amount of $5,000.00 but that he has been unable to collect the said $5,000.00 from the defendant, Robert Kellogg, in the aforementioned action in the Supreme Court of the State of New York, Rensselaer County, (Index No. 99934).

That on February 19, 1976, the plaintiff herein by notice of motion sought to have the defendant, Robert Kellogg, pay the plaintiff $5,000.00.

That by a memorandum-decision of the Honorable William R. Murray, Justice of the Supreme Court of the State of New York, dated March 4, 1976, Justice Murray denied the motion of the plaintiff herein for the order against Robert Kellogg, but in said order instructed the plaintiff herein that he should enter a judgment in the Supreme Court of the State of New York, Rensselaer County, and that the plaintiff could then seek enforcement of his $5,000.00 judgment through various creditor remedies. This decision and an order thereon were filed in the Rensselaer County Clerk's office on February 14, 1976, and on April 20, 1976, the plaintiff filed his notice of appeal to the Appellate Division of the State of New

York from the order of Justice William R. Murray.

That in respect to the other alleged causes of action contained in the complaint herein, your deponent does not believe that any apply to the defendant, the Superintendent of the New York State Police.

WHEREFORE, the defendant, the Superintendent of the New York State Police, demands judgment dismissing the complaint in its entirety as against the defendant, the Superintendent of the New York State Police, for the reason that the plaintiff has failed to show jurisdiction over the defendant, and that as to each of the causes of action alleged against the defendant, the Superintendent of the New York State Police, (Fifth and Sixth), the plaintiff has already caused another action in this Court as well as the various State Courts of the State of New York all as enumerated at the beginning of this affidavit, and that this lawsuit is in effect a duplicate of all said prior lawsuits, and for such other and further relief as to the Court may seem just and proper.

NOTICE OF APPEAL

Notice is hereby given that Donald Schanbarger, plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from an order and judgment dismissing the complaint in its entirety, entered in this action on May 17, 1976.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK, WASHINGTON COUNTY SS.:

GEORGE FERGUSON, being duly sworn, deposes and says, that on the 9 day of August, 1976, he served the within papers upon Marvin I. Honig, Esq. and Louis J. Lefkowitz, Esq. by enclosing one copy thereof in a securely sealed postpaid wrapper/each, addressed as follows:

Marvin I. Honig, Esq.
Rensselaer County Courthouse
Troy
New York 12180

Louis J. Lefkowitz, Esq.
The Capitol
Albany
New York 12224

by depositing the same in the post office box regularly maintained by the United States Government at SALEM, N.Y.

George Ferguson
George Ferguson

Sworn to before me this 9th day of August, 1976.

Donald A. Ennis Jr.
Notary Public Expires 03-30-78
Washington County, New York